impression that the drawer's funds are sufficient,[27] it is said that since both parties have been similarly deceived and are both alike innocent, the equities are equal and the defendant's legal title should prevail.[28] In like manner, where an obligor pays the assignee for value of a claim which both believe to be valid,[29] the same reasoning has been employed to justify the denial of a recovery.[30] The class of decisions last mentioned, however, do not seem to sustain this doctrine, but are rested rather on the theory that the payment is in effect by the plaintiff to the assignor of the claim, and by him to the assignee. In this view the plaintiff's rights are properly restricted to a recovery against the assignor.[31] Moreover in the former case supposed, it would seem that the drawee secured by his payment exactly what it was his intention to obtain, a right against the drawer's deposits. If this is so, the mere mistake in the value of that right is of course, in the absence of fraud, no ground of recovery.[32] In the principal case, however, the facts are susceptible of no such distinctions as those just mentioned, and although the doctrine of equal equities is squarely presented, it is difficult even here to find room for its application. It has never been held to govern in the case of the purchase of a forged instrument by another than the drawee,[33] and there appears to be no distinction in principle when the latter is the party concerned. In both instances alike the payment is made under the mistaken belief that a right is thereby secured against the maker, and further, the fact that in each case the defendant's equity arises on his purchase of the instrument, while the plaintiff's is created only on his payment to the defendant, would appear to render it improper to weigh these equities one against the other. Accordingly it seems that the doctrine of the principal case is preferable to that of *Price* v. *Neal*.[34]

RIGHTS AND LIABILITIES OF AN INFANT PARTNER.—Since the ancient common law, infants have been regarded as wards of the court, and their interests watched and their rights protected with jealous care. That they might not be the prey of scheming men nor of their own indiscretion, their ability to convey their property or contract away their volition was closely circumscribed. Thus the early tendency was to treat all contracts of an infant as binding on neither party and incapable of ratification,[1] and even when the rigor of this rule was modified to the extent that the infant's agreements were held merely

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[27]Chambers *v.* Miller (1862) 13 C. B. [N. S.] 125.

[28]Ames, The Doctrine of Price *v.* Neal *supra.*

[29]Abbott *v.* Merchants' Ins. Co. (1881) 131 Mass. 397.

[30]Ames, The Doctrine of Price *v.* Neal *supra.*

[31]Abbott *v.* Merchants' Ins. Co. *supra.*

[32]Badeau *v.* U. S. (1888) 130 U. S. 439; Taylor *v.* Hare (1805) 1 B. & P. [N. R.] 260.

[33]Jones *v.* Ryde (1848) 5 Taunt. 488; Markle *v.* Hatfield (N. Y. 1807) 2 Johns. 455; Young *v.* Adams (1810) 6 Mass. 182.

[34]First Nat. Bauk *v.* Bank of Windmere (1906) 15 N. D. 299; McKleroy & Bradford *v.* Southern Bank of Kentucky (La. 1859) 74 Am. Dec. 438.

[1]See *in re* Huntenburg (1907) 153 Fed. 768.

voidable at his option,[2] unless plainly to his detriment,[3] still his contracts for trade or business were scanned with special suspicion[4] and were frequently held not simply voidable but void.[5] Such a rule, however, by excluding him from the commerce of the world and depriving him of the many opportunities of employment and gain depending on contractual relations, was seen to be a handicap rather than a protection,[6] and now in a more liberal spirit contracts even for business are held to be binding on all parties until disaffirmed by the infant.[7]

Though the avoidance of his contracts leaves the infant free from liability,[8] the further question remains of his right to recover money ventured in business, or compensation for services rendered, under the rescinded contract. An early *dictum* of Lord Mansfield gave rise to the rule that if an infant pays money with his own hand he cannot get it back again,[9] but this rule manifestly deprived him of the very protection the law sought to afford, and accordingly it has given place to the better doctrine now established beyond question,[10] that if an infant has received no consideration under the contract, he can recover the money he has expended.[11] Indeed even if he has received consideration, it is settled that its restoration is a condition precedent to his right to rescind, in the case of a deed of land, only if it is still in his hands,[12] and his inability to return the money received will not preclude his recovery. The rule is the same in regard to the recovery of money invested in shares of stock,[13] and similarly he has been permitted to rescind contracts for labor and recover in *quantum meruit* for services rendered in pursuance thereof, without restoring the benefits received.[14] It is true that, as a prerequisite to the exercise of the equitable right of rescission, the infant is required to return such fruits of the contract as he may have in his possession,[15] but his right to avoid and recover his consideration could not be made dependent on his ability to put the other party in *statu quo*, except at the risk of rendering ineffectual the shield which the law has given him for his protection.

[2]See *in re* Huntenburg *supra;* Mauldin *v.* Southern Shorthand University (1907) 3 Ga. App. 800; Martin *v.* Gale (1876) L. R. 4 Ch. Div. 428; 1 Parsons, Contracts (9th ed.) 314, note 1.

[3]See Whitney *v.* Dutch (1817) 14 Mass. 457.

[4]Willet *v.* Tessier (1840) 15 La. 13; see Glossop *v.* Colman (1815) 1 Stark. 25; Skinner *v.* Maxwell (1872) 66 N. C. 45.

[5]Skinner *v.* Maxwell *supra.*

[6]Zouch *v.* Parsons (1765) 3 Burr. 1794.

[7]Minock *v.* Shortridge (1870) 21 Mich. 304, 315.

[8]See Whittemore *v.* Elliott (N. Y. 1876) 7 Hun 518.

[9]Holmes *v.* Blogg (1818) 8 Taunt. 508; *Ex parte* Taylor (1856) 8 De G. M. & G. 254; Earl of Buckinghamshire *v.* Drury (1761) 2 Eden C. 60, 72.

[10]Corpe *v.* Overton (1833) 10 Bing. 252; Medbury *v.* Watrous (N. Y. 1845) 7 Hill 110, overruling McCoy *v.* Huffman (N. Y. 1827) 8 Cow. 84.

[11]See note 10.

[12]Green *v.* Green (1877) 69 N. Y. 553; Chandler *v.* Simmons (1867) 97 Mass. 508.

[13]White *v.* New Bedford Cotton Waste Corporation (1901) 178 Mass. 20.

[14]Vent *v.* Osgood (Mass. 1838) 19 Pick. 572; Judkin *v.* Walker (1840) 17 Me. 38.

[15]Gordon *v.* Miller (1905) 111 Mo. App. 342; Pelletier *v.* Couture (1889) 148 Mass. 269; Conary *v.* Sawyer (1889) 92 Me. 463.

Since a partnership is a purely contractual relation, there is nothing to prevent an infant from becoming a partner,[16] with the rights and responsibilities of an adult,[17] but with the privilege of escaping at any time from the contract. To free himself from the individual liability which he shares with his partners in respect to the obligations of the firm, he may of course interpose the defence of infancy,[18] but in the course of business the presumption is that he will not do so, but will abide by his partnership agreement and obligations.[19] So far, then, the relations of an infant partner are controlled by the same principles which govern his rights under the law of contracts, but in the recent case of *Latrobe* v. *Dietrich* (Md. 1910) 78 Atl. 983, a further problem was presented. The plaintiff, a partnership consisting of an infant and an adult, sought to be relieved from a firm contract under which money had been advanced. The court, after referring to the unquestioned fact that the presence of the infant in the firm would be no ground for relieving the adult partner, since the privileges of infancy are purely personal,[20] proceeded to discuss the more serious question as to the infant's right to recover money which the firm had advanced under the contract. The decision, which denied this right, was rested on the well settled rule peculiar to partnership law that an infant, after receiving consideration by being permitted to participate in the fortunes of the business, cannot under any circumstances, in the absence of fraud, recover money paid to procure his interest therein.[21] The application of this principle, however, does not seem to have been required by the facts of the case, since the only question actually involved was as to the recovery by an infant partner, not of the price of his interest, but of his share of the firm assets expended in pursuance of a contract made in the course of business. It would seem that the interest of an infant partner in the assets of the firm is a benefit derived from the contract of partnership, which, since it is still in his possession, he must sacrifice as the price of exemption from individual liability on claims against the firm;[22] and accordingly, whether the enterprise is solvent or insolvent or actually at an end, or in the hands of a receiver, even though at the instance of the infant himself, it is held that the entire assets must remain in the hands of the other partner subject to the liabilities of the firm.[23] Assuming the correctness of the foregoing, the result reached by the court seems to be unassailable.

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[16]Penn *v.* Whitehead (Va. 1867) 17 Gratt. 503, 521; 1 Story, Partnership §7.

[17]Whitney *v.* Dutch (1817) 14 Mass. 457; See Avery *v.* Fisher (N. Y. 1882) 38 Hun 508.

[18]See Whittemore *v.* Elliott *supra.*

[19]Continental National Bank *v.* Strauss (1893) 137 N. Y. 148.

[20]Avery *v.* Fisher *supra;* Continental National Bank *v.* Strauss *supra;* Gibbs *v.* Merrill (1810) 3 Taunt. 307.

[21]Moley *v.* Brine (1876) 120 Mass. 324; Adams *v.* Beall (1887) 67 Md. 53; Page *v.* Morse (1880) 128 Mass. 99.

[22]Chandler *v.* Simmons *supra;* Pelletier *v.* Couture *supra;* Conary *v.* Sawyer *supra;* Hill *v.* Bell (1892) 111 Mo. 35, 45.

[23]Conary *v.* Sawyer *supra;* Pelletier *v.* Couture *supra;* Hill *v.* Bell *supra;* Kitchen *v.* Lee (N. Y. 1844) 11 Paige 107; Shirk *v.* Shultz (1887) 113 Ind. 571.